



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 14, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Christine M. Radman, Esq.
NYS Department of Health
90 Church Street 4th Floor
New York, New York 10007

Anthony Z. Scher, Esq.
Attorney for Respondent
800 Westchester Avenue, Suite N-641
Rye Brook, New York 10573

Delys St. Hill, M.D.


RE: In the Matter of Delys St. Hill, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-407) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been **revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Riverview Center
150 Broadway – Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A large black rectangular redaction box covering the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

In the Matter of

Delys St. Hill, M.D. (Respondent)

A proceeding to review a Determination by a Committee
(Committee) from the Board for Professional Medical
Conduct (BPMC)

Administrative Review Board (ARB)

Determination and Order No. 16- 407

COPY

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Christine A. Radman, Esq.
For the Respondent: Anthony Z. Scher, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct in treating persons who had been injured in motor vehicle accidents. The Committee voted to suspend the Respondent's license to practice medicine in New York State for ninety days, to place the Respondent on probation for five years following the suspension and to limit the Respondent's practice. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2016), both parties ask the ARB to modify the Committee's Determination. After considering the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination on the charges, the Determination to suspend the Respondent's License and the Determination to place the Respondent on probation. We modify the Determination on the practice limitation.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2), 6530(3), 6530(5), 6530(21), 6530(32) & 6530(35) (McKinney Supp. 2016) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,
- practicing medicine with incompetence on more than one occasion,
- willfully filing a false report,
- failing to maintain accurate patient records, and,
- ordering excessive tests or treatments.

The charges related to the care that the Respondent provided for seven persons (Patients A-G), who had been injured in automobile accidents. The record refers to the Patients by initials to protect patient privacy. The care at issue occurred in the years 2006-7, while the Respondent practiced Physical Medicine and Rehabilitation (PM&R) at the Bronx Medical Practice. The Respondent billed the New York State No-Fault Insurance Program (No-Fault) for services provided to the Patients. Following the hearing, the Committee rendered the Determination now on review.

The Committee dismissed the charges that the Respondent practiced with incompetence on more than one occasion and that the Respondent willfully filed false reports. The Committee sustained all other charges. The Committee found that the Respondent's solely owned medical corporation followed a pattern of billing No-Fault at the higher rate paid to a consultant, even though no referral from another healthcare practitioner existed. The Committee also found that the Respondent and her employees made unsupported diagnoses for these seven patients and then performed unnecessary tests, including invasive and sometimes painful electro-diagnostic tests. The Respondent claimed that the testing was necessary to identify the source of the pain that Patients experienced, but the Respondent never prescribed analgesic or anti-inflammatory medication and never modified the Patients' treatment as their purported conditions worsened. The Committee concluded that the Respondent's sole motive for seeing these Patients was her

own financial benefit. The Committee stated that a pattern of nearly identical medical histories of Patients A-G demonstrated that the Respondent created the records fraudulently to fit a formula for motor vehicle accident patients in order to justify over-diagnosis and unnecessary testing and treatment. The Committee found further that the medical histories, physical examinations and reports that the Respondent and her employees recorded were formulaic and designed to justify unnecessary tests and treatments. The Committee inferred that the Respondent misrepresented the Patients' conditions with the intent to deceive No-Fault in order to maximize her insurance reimbursement.

In making their findings, the Committee considered expert medical testimony from Joseph Carfi, M.D. for the Petitioner and Harry M. Schwartz, M.D. for the Respondent. The Committee found both physicians qualified, but the Committee gave less weight to the testimony by Dr. Schwartz because he evaded answering questions frequently when his testimony might be adverse to the Respondent or confirm damaging testimony given by the Department's expert. The Committee found Dr. Schwartz less forthright than Dr. Carfi. The Committee found Dr. Carfi's testimony to be credible and consistent with the medical records in evidence.

The Committee found the Respondent lacked credibility in several areas. A conflict permeated the hearing over the Respondent's medical records. The Office for Professional Medical Conduct (OPMC) first informed the Respondent concerning an investigation into her practice in 2008 and thereafter requested copies of the medical records for Patients A to G. The Respondent's office submitted records to OPMC for the Patients and those provided records that eventually came into evidence at the hearing. The Respondent later asserted that her office had provided billing records only and that there had been separate medical records for each Patient. The Respondent stated that she destroyed those medical records in 2013 because she thought the OPMC investigation had concluded and because she had maintained the records for the legally required six years following treatment. The Committee found the Respondent non-credible in that explanation and concluded that there had never been any records for the Patients other than those records in evidence. The Respondent claimed actual prejudice in preparing her defense due to delay by OPMC in bringing this case to hearing and she alleged that the delay resulted in her

destroying the medical records that would have assisted her defense. The Committee found that claim unconvincing because they rejected the Respondent's assertion that she had destroyed a set of records in the first place. The Respondent submitted her insurance reimbursement claims at the higher rate allowed for a consultant, but no referral forms appeared in the records in evidence. The Respondent explained that the referral forms had been among the records destroyed in 2013. The Committee found that explanation non-credible again because they found that there had never been other records.

The Committee sustained the charges that the Respondent practiced fraudulently, practiced with negligence on more than one occasion, ordered unnecessary tests or treatments and failed to maintain accurate medical records. The Committee dismissed the charges alleging practice with incompetence on more than one occasion, which amounts to practicing with a lack of skill or knowledge necessary to practice medicine safely. The Committee determined that the Respondent's misconduct was due to negligence and fraud. The Committee also dismissed the charges that the Respondent willfully filed false reports. The Committee found those charges duplicative of the charges alleging fraud.

The Committee, as a whole, found the Respondent lacked credibility, showed no remorse for her misconduct and failed to take responsibility for her actions. The Committee also concluded that the Respondent guided the manner in which these Patients would be evaluated and treated to maximize reimbursement, rather than rendering appropriate care as determined by each Patient's individual and specific medical conditions and needs. In making the determination on penalty, one Committee member voted to revoke the Respondent's License, but the other two members determined that the Respondent could provide competent medical care in her field if there was a way to remove financial gain as the sole guiding force for patient care. The Committee majority voted to suspend the Respondent's License for 90 days and to place the Respondent on probation for five years following the suspension under the terms that appear as Appendix A to the Committee's Determination. The probation terms include practice with a monitor. To allow for greater oversight and to remove the Respondent from handling money and billing directly, the majority voted to limit the Respondent's License to practice in a general

hospital, diagnostic/treatment center or nursing home holding licensure under PHL Article 28 (Article 28 Facility).

Review History and Issues

The Committee rendered their Determination on August 18, 2016. This proceeding commenced when the ARB received the Petitioner's Notice requesting review on August 29, 2016 and then the Respondent's Notice on September 6, 2016. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief, the Respondent's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on or about October 16, 2016.

The Petitioner asked that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner's Brief stated that despite the seriousness of the findings against the Respondent and the threat they represent to the public, only one Committee member voted for revocation. The Petitioner asserted that the findings established a practice pattern demonstrating that the Respondent's sole motivation for seeing the Patients was the Respondent's financial benefit. The Petitioner argued further that the Respondent's lack of integrity was pervasive and not strictly limited to billing. The Petitioner's brief recounted the several instances in the Determination, in which the Committee found the Respondent non-credible in her testimony. The Petitioner described it as unthinkable to allow the Respondent to continue practicing medicine, given her misuse of the Patients.

The Respondent argued that there were significant delays in the investigation in this case and in bringing the charges, that the delay prejudiced the Respondent in defending the charges and that the delay warrants the dismissal of the charges. The Respondent alleged errors in the Committee's findings, in the failure to dismiss charges due to delay by OPMC and in the

sanction the Committee imposed. The Respondent questioned how OPMC or the Committee decided that there were unnecessary tests or treatments, when medical records were no longer available. The Respondent argued that the findings, that additional medical records never existed, amounted to a clumsy effort by the Committee to avoid dismissing charges, due to the purging of records. The Respondent also alleged errors by the Committee in crediting the expert testimony by Dr. Carfi. The Respondent asked that the ARB dismiss the charges due to the delay and the alleged errors. In the alternative, the Respondent request a modification to the penalty. The Committee suspended the Respondent's License, placed the Respondent on probation and limited the Respondent to practice in an Article 28 Facility. The Respondent contended that PM&R physicians see almost all patients by referral, rather than in a hospital or clinic setting. The Respondent requested that the ARB modify the practice limitation to require the Respondent to work as an employee in a medical practice.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health,

222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct. We affirm the Committee's Determination to suspend the Respondent's License for ninety days, to place the Respondent on probation for five years following the probation and to limit the Respondent's License. We modify the limitation on the License.

The Respondent argued that the delay in the investigation and charges in this case caused actual prejudice to the Respondent in the case, because the Respondent destroyed the full medical records of the Patients after the Respondent assumed that OPMC had concluded its investigation. The Committee found that argument unpersuasive because the Committee found Respondent's testimony about the full records non-credible and the Committee found that the records that the Respondent's office provided to OPMC constituted the full records from the Respondent's practice for Patients A – G. Those records, which the Respondent described as billing records only, came into evidence at the hearing and formed the basis for Dr. Carfi's testimony about the care provided to Patients A – G. The ARB defers to the Committee as the fact finder in their findings as to the Respondent's credibility on the records and on the credibility of the expert testimony by Dr. Carfi and Dr. Schwartz. The evidence that the Committee found credible established by preponderant evidence that the Respondent practiced with fraud and with negligence on more than one occasion in treating Patients A – G, that the Respondent ordered excessive or unnecessary tests and treatments and that the Respondent failed to maintain accurate medical records. We affirm the Committee's Determination on the charges.

Although we found delay provided no grounds for dismissing the charges, we questioned whether the delay and the time period since the misconduct provides mitigating circumstances in considering the sanction in this case. We answer that question in the affirmative. There was serious misconduct 9-10 years ago that warrants a severe sanction and that warrants time on probation with a practice monitor to assess the Respondent's current practice. We note, however, that there are no allegations about any improper practice over the last nine years. We agree with the Committee majority that there may be a way for the Respondent to provide competent PM&R care if a sanction could remove the Respondent from handling money and direct billing.

We agree with the Respondent that a restriction to an Article 28 Facility may remove the Respondent from PM&R practice entirely. We affirm the Determination to suspend the Respondent's License for 90 days and to place the Respondent on probation for five years following the suspension under the terms that appear at Appendix A to the Committee's Determination and that include practice monitoring. We overturn the limitation to practice in an Article 28 Facility. We vote 5-0 to ban the Respondent from ownership of a professional corporation and we ban the Respondent from solo medical practice or operating her own office.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License for 90 days and to place the Respondent on probation for five years following the suspension, under terms that include practice with a monitor.
3. The ARB overturns the Committee's Determination to limit the Respondent to practice in an Article 28 Facility.
4. The ARB limits the Respondent's License to ban the Respondent from solo practice and to ban the Respondent from owning a professional corporation.

Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Delys St. Hill, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the
Matter of Dr. St. Hill.

Dated: 12/09/2016, 2016


Linda Prescott Wilson

In the Matter of Delys St. Hill, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the
Matter of Dr. St. Hill.

Dated: December 9, 2016

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Peter S. Koenig, Sr.

In the Matter of Delys St. Hill, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. St. Hill.

Dated: 12/12/ 2016



Steven Grabiec, M.D.

In the Matter of Delys St. Hill, M.D.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. St. Hill.

Dated December 12 2016


Richard D. Milone, M.D.

In the Matter of Delys St. Hill, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. St. Hill.

Dated: Dec 12, 2016



John A. D'Anna, M.D.